

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 24, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFF HYMAS,

Plaintiff,

v.

FRANCIS WAYNE BARCLAY,
individually and in his official
capacity as Superior Court Judge of
Modoc County; and DOES 1-V,

Defendant.

NO: 2:20-CV-222-RMP

ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS AND DISMISSING
COMPLAINT WITHOUT
PREJUDICE

BEFORE THE COURT are a Motion to Dismiss by Defendant Francis Wayne Barclay, ECF No. 14; a Motion for Pro Bono Counsel by Plaintiff Jay Hymas, who is proceeding pro se and *in forma pauperis*; and an Application for Default per Fed. R. Civ. P. 55(a) by Plaintiff, ECF No. 15. Having reviewed the motions and related filings, the remaining docket, and the relevant law, the Court is fully informed.

BACKGROUND

Plaintiff’s Complaint names as Defendant Modoc County, California, Superior Court Judge Francis Wayne Barclay, alongside five “Doe” Defendants.

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS AND
DISMISSING COMPLAINT WITHOUT PREJUDICE ~ 1

1 ECF No. 1 at 1. Plaintiff alleges bias and inaction by Judge Barclay in a civil case
2 that Plaintiff filed in 2015 in which he is seeking a judicial determination regarding
3 dissolution of an alleged oral partnership pursuant to which Plaintiff was residing
4 on and managing a “common law crop-share” farm in Modoc County. *Id.* at 2. It
5 is unclear what allegations pertain to any Doe Defendants.

6 Plaintiff alleges “causes of action to justify the relief sought that are not
7 grounded in judicial error but in purposeful violation of constitutional and legal
8 rights that take Judge Barclay[’]s decisional record and actions outside his official
9 capacities granted to him under the federal and state constitutions and California
10 law, court rules and the California Code of Judicial Ethics.” ECF No. 1 at 4
11 (internal footnote citations omitted). Plaintiff recites 37 instances that he alleges
12 constitute separate causes of action on the basis of bias, ethical violations, “failure
13 to decide, equal protection of the law (equal protection), lack of due process (due
14 process), lack of substantial justice (substantial justice), failure to follow court
15 rules” or some combination of those alleged wrongs. *Id.* at 5–19. Plaintiff seeks
16 relief in the following form:

- 17 1. Injunctive relief from [Defendant Judge Barclay] hearing any
18 further matters for the California case in question and any affect
19 [sic] given to any of his decisions.
- 20 2. Removal from State Court to this court of the subject case in
21 California.
3. Declaratory relief that that [sic] Judge Barclay has exhibited bias,
unlawful and unconstitutional action/decisions and failed to
deliver any justice let alone “substantial” justice.

4. Declaratory relief that Judge Barclay's personal jurisdiction over Plaintiff ended, at a minimum, when he failed to answer (no verification) within 10 days the first Statement to disqualify and self-ruled on the Statement against him contrary to law.
5. Injunctive and declaratory relief from the California Discovery Act as unconstitutional in those parts that diminish equal protection and impinge constitutional rights to due process.
6. Judgment in the amount of \$1,734,200 against [Defendant] for liquidated and unliquidated damages resulting from his highly vindictive (calling Plaintiff a liar embezzler, etc.), irreparable and clearly unlawful (stay was in place) judgment against Plaintiff.
7. Relief via punitive damages regarding the actions of [Defendant].
8. Plaintiff's cost of litigation including attorney fees.
9. Further relief that undoubtedly Plaintiff is unaware of regarding the actions of [Defendant].

Id. at 20.

Defendant filed a Motion to Dismiss for lack of personal jurisdiction, based on federal abstention, and for failure to state a claim on July 17, 2020. ECF No.

14. Defendant attached a purported docket report from California state court indicating that the civil case at issue in Plaintiff's Complaint, ECF No. 1, is ongoing. ECF No. 14 at 14–36.

Although Defendant had appeared in this matter for purposes of filing the Motion to Dismiss, Plaintiff filed an Application for Default on August 6, 2020. ECF No. 15. Defendant opposed the Application for Default on the basis that Defendant had responded to Plaintiff's Complaint by moving to dismiss. ECF No. 16. Plaintiff filed a reply renewing his request for entry of default. ECF No. 17.

1 Plaintiff did not respond to Defendant's Motion to Dismiss within thirty days, the
2 response time provided for pro se litigants under LCivR 7(c)(2)(A).

3 DISCUSSION

4 Although Plaintiff's failure to respond to Defendant's Motion itself supports
5 entry of an adverse order, *see* LCivR 7(e), the Court nevertheless analyzes the
6 substance of Defendant's Motion to Dismiss.

7 A judicial abstention doctrine set forth by *Younger v. Harris*, 401 U.S. 37,
8 44–45 (1971), adopts “a strong federal policy against federal court interference
9 with pending state judicial proceedings absent extraordinary circumstances.”
10 *Woodfeathers, Inc. v. Washington Country, Oregon*, 180 F.3d 1017, 1020 (9th Cir.
11 1999). *Younger* abstention applies to state civil proceedings, as well as criminal,
12 regardless of whether the state proceedings are pending in the trial or the appellate
13 court. *Id.*

14 The federal court should abstain from interfering with pending state court
15 proceedings where “the federal action would have the practical effect of enjoining
16 the state proceedings.” *ReadyLink HealthCare, Inc. v. State Comp. Ins. Fund*, 754
17 F.3d 754, 758 (9th Cir. 2014) (setting forth requirements for *Younger* abstention in
18 civil cases); *see also Baffert v. Cal. Horse Racing Bd.*, 332 (holding that a claimed
19 constitutional violation “does not, by itself, constitute an exception to the
20 application of *Younger* abstention”). Where the abstention requirements are met,
21 federal courts should dismiss actions seeking declaratory and injunctive relief, but

1 should stay damages actions until the state proceedings are completed. *See*
2 *Gilbertson v. Albright*, 381 F.3d 965, 977–78 (9th Cir. 2004).

3 Plaintiff’s Complaint seeks: to enjoin Judge Barclay from presiding over any
4 further matters in the case; to remove the case from the California state court to
5 this Court; to declare that Judge Barclay’s jurisdiction over Plaintiff has ended; and
6 to declare that Judge Barclay has displayed bias and has failed to render lawful
7 decisions. ECF No. 1 at 20. Therefore, the relief that Plaintiff seeks effectively
8 would enjoin the ongoing state proceedings, and abstention under *Younger* is
9 appropriate. *See ReadyLink HealthCare, Inc.*, 754 F.3d at 758.

10 With respect to Plaintiff’s request for damages against Defendant Judge
11 Barclay in his Complaint, Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a
12 complaint for failure to state a claim. A court may dismiss a claim under Rule
13 12(b)(6) when the plaintiff has included allegations disclosing an absolute defense
14 or bar to recovery. *See United States v. Gaubert*, 499 U.S. 315, 324–25 (1991).
15 Defendant argues that both the Eleventh Amendment and the common law of
16 judicial immunity prohibit Plaintiff’s suit for damages against Judge Barclay for
17 his acts in his official capacity, which are the only acts challenged by Plaintiff. *See*
18 ECF No. 14 at 8–10.

19 Absolute judicial immunity “insulates judges from charges of erroneous acts
20 or irregular action, even when it is alleged that such action was driven by malicious
21 or corrupt motives, or when the exercise of judicial authority is ‘flawed by the

1 commission of grave procedural errors.” *Curry v. Castillo (In re Castillo)*, 297
2 F.3d 940, 947 (9th Cir. 2002) (citing *Forrester v. White*, 484 U.S. 219, 225 (1988);
3 quoting *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)). Furthermore, the Eleventh
4 Amendment prohibits suits for damages, declaratory relief, or injunctive relief
5 against a state or its agencies for legal or equitable relief unless the state has
6 waived its immunity or Congress has specifically overridden sovereign immunity.
7 *See Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 267–68 (1997); *Papasan*
8 *v. Allain*, 478 U.S. 265, 276 (1986).

9 Plaintiff’s claims of constitutional violations by Judge Barclay in his official
10 capacity as a state actor likely is raised under 42 U.S.C. § 1983, which provides for
11 a civil action for a deprivation of rights under the U.S. Constitution or federal laws
12 by a “person” acting under color of law. However, section 1983 does not contain a
13 waiver of Eleventh Amendment immunity. *Stivers v. Pierce*, 71 F.3d 732, 749 (9th
14 Cir. 1995) (“The Eleventh Amendment prohibits suits against a state, and section
15 1983 does not abrogate this immunity.”); *see also Dittman v. California*, 191 F.3d
16 1020, 1025–26 (9th Cir. 1999) (“The State of California has not waived its
17 Eleventh Amendment immunity with respect to claims brought under § 1983 in
18 federal court, and the Supreme Court has held that § 1983 was not intended to
19 abrogate a State's Eleventh Amendment immunity.”) (internal citations and
20 quotation marks omitted). Moreover, the Ninth Circuit has held that “a suit against
21 the Superior Court is a suit against the State, barred by the [E]leventh

1 [A]mendment.” *Greater L.A. Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103,
2 1110 (9th Cir. 1987); *see Simmons v. Sacramento Cty. Super. Ct.*, 318 F.3d 1156,
3 1161 (9th Cir.2003).

4 Plaintiff challenges only actions by Judge Barclay in his capacity as a
5 presiding judicial officer in Plaintiff’s California state court case. *See* ECF No. 1
6 at 2–20. Therefore, the Court finds that Plaintiff’s claim against Judge Barclay
7 fails to state a claim under Fed. R. Civ. P. 12(b)(6) because the challenged actions
8 are entitled to absolute judicial immunity. *See In re Castillo*, 297 F.3d at 947.
9 Moreover, Plaintiff does not allege any basis for a waiver of immunity under the
10 Eleventh Amendment. Therefore, Plaintiff’s claim for damages against Defendant
11 Judge Barclay also must be dismissed for failure to state a claim under Fed. R. Civ.
12 P. 12(b)(6) under the Eleventh Amendment.

13 Because the Court finds it appropriate to dismiss Plaintiff’s claims for
14 injunctive and declaratory relief pursuant to *Younger* abstention principles, and his
15 claim for damages pursuant to Eleventh Amendment and judicial immunity
16 principles, it need not address the personal jurisdiction arguments raised by
17 Defendant’s Motion to Dismiss. *See* ECF No. 14 at 3–5. However, the Court
18 notes that Plaintiff does not allege any contacts between Defendant Judge Barclay
19 and Washington State and alleges only acts that took place in California. *See*
20 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)
21 (plaintiff bears the burden of establishing a court’s personal jurisdiction over

1 defendants); Fed. R. Civ. P. 12(b)(2) (providing for dismissal for lack of personal
2 jurisdiction, when the motion is made before an answer is filed).

3 Plaintiff's Complaint shall be dismissed without prejudice and without leave
4 to amend, upon a finding that Plaintiff's Complaint against a Defendant who is
5 immune from suit and challenging an ongoing state civil proceeding cannot be
6 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1107–11 (9th Cir.
7 1995).

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Defendant's Motion to Dismiss, **ECF No. 14**, is **GRANTED**.

10 2. Plaintiff's Motion for Pro Bono Counsel, **ECF No. 11**, and
11 Application for Default per Fed. R. Civ. P. 55(a), **ECF No. 15**, are **DENIED AS**
12 **MOOT**.

13 3. Plaintiff's Complaint, **ECF No. 1**, is **DISMISSED WITHOUT**
14 **PREJUDICE** as barred by *Younger* abstention and **WITHOUT LEAVE TO**
15 **AMEND**.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order, provide copies to counsel and to Plaintiff, and **close the file**.

18 **DATED** August 24, 2020.

19
20 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
21 United States District Judge